IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10364 of 2003
With
CIVIL APPLICATION No. 12331 of 2005
With
CIVIL APPLICATION No. 1792 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK GORDHANBHAI CHAUHAN & 1 - Petitioner(s)
Versus
STATE OF GUJART THRO' SPECIAL SECRETARY & 2 - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioner(s) : 1 – 2.; MR SATYAM CHAYYA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/02/2007

ORAL JUDGMENT

1. With the consent of the learned advocate appearing for both the sides, when the Civil Application No. 1792 OF 2007 is taken up for hearing, the main Special Civil Application itself is finally heard.

2. The short facts of the case are that the petitioners purchased an agricultural land at village Khanderi, Taluka Paddhari by registered Sale Deed vide No. 2993 and 3669 and the entries were also mutated in the revenue record vide No. 303 & 304 on 09.10.1984. Said entries were also certified on 04.01.1985. It appears that the proceedings were initiated suo motu against the entry and the powers were exercised under the Bombay Land Revenue Code and Saurashtra Gharkhed Tenancy Settlement and Agricultural Ordinance (hereafinter referred to as 'the Ordinance') and ultimately, vide order dated 31.03.1992, the entries were cancelled and the order was also passed for eviction of the petitioners from the land in question. The petitioners preferred an appeal before the Collector being Appeal No. 53 of 1992 and the said appeal came to be dismissed on 03.12.1993. The petitioners thereafter preferred revision before the State Government and as per the petitioners, the said revision was admitted. However, subsequently, vide

order dated 31.03.2003, the petitioners were communicated that the matter is under the Ordinance and therefore, the State has no jurisdiction and therefore, the revision is not entertained. It is under these circumstances, the petitioners have approached this Court by way of the present petition.

3. I have heard Mr. Kanabar for the petitioners, Mr. Chayya, learned AGP for the State Authorities, and Mr. Thakkar, for the application of Civil Application No. 12331 of 2005.

4. On the aspects of allowing the Civil Application No. 12331 of 2005 is concerned, Mr. Kanabar, learned counsel appearing for the orig. petitioners has no objection. Even otherwise also, it appears that the claim of the applicant is that, it has purchased the property and further, the said applicant had preferred revision before the Gujarat Revenue Tribunal, which has been allowed as per the order dated 30.08.1993 by setting aside the order of the Collector and the matter is remanded to the Collector as observed by the Tribunal. Therefore, in any case, the presence of the applicant is required for proper adjudication of the matter.

5. Under the circumstances, the applicant of

Civil Application No. 12331 of 2005 is permitted to be joined as party respondent in the main Special Civil Application and the application shall stand allowed accordingly.

6. In the main Special Civil Application, it appears from the proceedings that the Assistant Collector while exercising the suo motu powers, invoked the power under the Bombay Land Revenue Code as well as under the Ordinance. The said aspect is apparent from the order dated 31.03.1992 passed by the Assistant Collector. However, it appears that vide order dated 31.03.1992, the entries are cancelled which were certified by the Mamlatdar on 04.01.1985 and the eviction is ordered as per Section 75 of the Ordinance. The District Collector in Appeal vide order dated 03.12.1993/22.11.1993, dismissed the appeal and confirmed the order of the Assistant Collector dated 31.03.1992. It also appears that the petitioners herein had preferred revision before the Tribunal against the order passed by the Collector in Appeal being Revision No. 45/93 and the Tribunal in the said revision observed that in the proceedings of Revision No. 44/92 preferred by one Arunkumar Muchalla, together with the present petitioners, the power is exercised of revision under the Ordinance and the order of the Collector is set aside and the matter is

remanded to the Collector for its decision in accordance with law. So far as the revisional power under the Bombay Land Revenue Code is concerned, it was observed by the Tribunal that it has no jurisdiction and therefore, the revision was returned.

7. It may also be recorded that the very land prior to the initiation of the proceedings under the Land Revenue Code and under the Ordinance by the Assistant Collector, was sold by the petitioners to the newly added respondent, i.e. applicant of Civil Application No. 12331 of 2005, on 04.07.1986 and since the land was sold to the said person, proceedings were also initiated by the Collector under Section 54 read with Section 75 of the Ordinance and in the said proceedings, vide order dated 17.09.1992, the order was passed for forfeiture of the land, against which, revision was preferred being Revision No. 44/92 before the Revenue Tribunal and vide order dated 30.08.1993, the Tribunal has set aside the order of the Collector and the matter is remanded to the Collector with the direction to issue notice to the transferor and transferee and to pass appropriate orders as per the observations made in the decision of the Tribunal.

8. Therefore, it appears that so far as the

petitioners are concerned, the order of the Collector operated qua the cancellation of the revenue entry and the eviction under the Ordinance, whereas in the proceedings initiated against the newly added applicant and the petitioners herein, the matter ended at the level of the Collector for forfeiture of the land. However, on the aspects of forfeiture of the land, together with the newly added applicant, the matter is remanded by the Tribunal to the Collector for reconsideration. Whereas, in the very revision, preferred before the Tribunal by the petitioners herein, so far as it relates to exercise of revenue jurisdiction under the Bombay Land Revenue Code, the Tribunal observed that it had no jurisdiction. The State Government in the revision preferred by the petitioner, vide order dated 31.03.2003, communicated that it has also no jurisdiction, if the legality and validity of the order under the Ordinance is to be examined, but maintain the cancellation of the entry.

9. It appears that the order of the Tribunal dated 30.08.1993 in the proceedings of the revision No. 44/92 is not challenged by any party to the proceedings including the State Government before any higher forum. Therefore, if the order of the Gujarat Revenue Tribunal dated 30.08.1993 passed in the Revision

No.44/92, preferred by the newly added party and the petitioners herein is to operate, the consequences would be that the Collector would be required to rehear the matter in light of the order passed by the Tribunal in the said revision, whereas, as per the order dated 31.03.2003 of the State Government, the cancellation of the entry was maintained but, the revision against the order under the Ordinance was not entertained having no jurisdiction.

10. Considering the aforesaid facts and circumstances, it appears that a peculiar situation has arisen inasmuch as for the very land, qua one proceedings against the petitioners, the matter is partly decided under the Land Revenue Code by the State Government for cancellation of the entry by maintaining the order for cancellation of the entry. Whereas, for the revisional jurisdiction under the Ordinance, the State Government has declined to exercise the power. As such, the original order was common under the Ordinance and under the Code and cancellation of the entry is based on the decision that the Transaction is hit by the provisions of the Ordinance, and therefore, in any case, the proper Forum will have to examine the legality and validity of the transaction keeping in view the provisions of

the Ordinance. However, in respect to the another revision preferred under the Ordinance, the Tribunal in the proceedings of Revision No. 44/92, vide order dated 30.08.1993, has observed that not only the opportunity of hearing is required to be given, but the other aspects as to whether situation were beyond the control or not is required to be examined.

11. Therefore, considering the facts and circumstances, it appears that if the Collector is directed to decide the proceedings of the Appeal No. 53/92 afresh, the same would meet with the ends of justice and there will be uniformity in the order of the competent authority.

12. In view of the aforesaid observations, the order passed by the Collector dated 03.12.1993 in the proceedings of Appeal No. 53/92 is quashed and set aside, in view of the aforesaid peculiar circumstances referred to hereinabove with the further direction that Appeal No. 53/92 shall stand restored to the file of the Collector. It is further directed that the Collector shall decide the proceedings of the Appeal No. 53/92 preferred by the petitioners together with the proceedings of Land Case No. 713/612 initiated against the petitioners and Shri Arunkumar

Muchhala, which has been remanded by the Tribunal vide order dated 30.08.1993 in Revision Application No. 44/92. It is further observed and directed that the Collector shall give opportunity of hearing to the concerned parties and pass appropriate orders, as early as possible, preferably within a period of six months from the receipt of the order of this Court. Until the decision is taken by the Collector, status qua as operating of the land in question qua the possession and title shall be maintained.

13. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

In view of the order passed in the main Special Civil Application, Civil Application No. 1792 of 2007 shall not survive and shall stand disposed of accordingly.

(JAYANT PATEL, J.)

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